

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of plaintiff, a civil detainee at Sexual Offender Rehabilitation Treatment Services (“SORTS”), for leave to commence this action without payment of the required filing fee [Doc. #2]. The Court finds that plaintiff does not have sufficient funds to pay the filing fee and will grant plaintiff’s motion to proceed in forma pauperis. See 28 U.S.C. § 1915. Furthermore, after reviewing the complaint, the Court will order the Clerk to issue process or cause process to be issued on the complaint.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff brings this action against several employees of the Missouri Department of Mental Health, pursuant to 42 U.S.C. § 1983, claiming violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff alleges that over a three year period he was denied sufficient exercise and recreation as to amount to cruel and unusual punishment under the Constitution. In addition to his conditions of confinement claim under § 1983, plaintiff also brings a claim against defendants under Missouri state law. Plaintiff seeks both monetary damages and injunctive relief for the purported unlawful behavior which he states is still occurring.

The Court finds that plaintiff has asserted non-frivolous claims that survive review under § 1915. Thus, the Court will order the Clerk to issue process on the complaint. However, the Court believes that the facts and legal issues involved in this action are not

so complicated as to warrant appointment of counsel at this time. As such, plaintiff's motion for appointment of counsel will be denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the complaint pursuant to the waiver agreement the Court has with the Missouri Department of Mental Health.

IT IS FURTHER ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), defendants shall reply to plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [Doc. #4] is **DENIED**.

IT IS FURTHER ORDERED that this case is assigned to Track 5B: Prisoner Standard.

Dated this 19th day of February, 2012.

/s/Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE